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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,533	02/18/2004	William T. Quinlin	7083	7159

29394 7590 08/10/2004

BWX TECHNOLOGIES, INC.
1562 BEESON STREET
ALLIANCE, OH 44601

EXAMINER

PARSA, JAFAR F

ART UNIT	PAPER NUMBER
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1621

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,533

Applicant(s)

QUINLIN ET AL.

Examiner

Jafar Parsa

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

The specification is objected to because the chemical formula for hexanitrostilbene given on page 1, line 10 is incorrect. Correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellamy et al (EP 0277386 A2).

Applicants' claimed invention is directed to a process for the manufacture of ultra-fine-particle hexanitrostibene (HSN), comprising the steps:

- a. mixing hexanitrostilbene with n-methylpyrrolidone at a ratio of 15 grams hexanitrostilbene per 400 ml n-methylpyrrolidone;
- b. heating the mixture to a temperature of 82 °C;

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- c. mixing the heated solution with cold water by aspiration;
- d. capturing the resulting slurry in a receiver;
- e. filtering the slurry; and
- f. drying the filtered slurry.

Bellamy teaches a method for producing HNS II by using N-methylpyrrolidone as the recrystallizing solvent and using ultrasonic treatment to fracture the needle-shaped crystals (see page 2, lines 49-52). Bellamy in Example 8 discloses that 304 gram of HSN was dissolved in N-methylpyrrolidone at 125 °C. PhCl was then added with mechanical stirring during 50min while keeping the temperature at 125 °C. After cooling, the suspension was transferred to a beaker placed in an ultrasonic bath and treated ultrasonically with mechanical stirring during 2h. The solid was filtered off, was washed with water and then dried. The examiner notes that steps a through f of the instant claimed invention is part of recrystallization process that has been disclosed by Bellamy et al.

The claims differ from the reference with respect to the ratio of hexanitrostilbene to n-methylpyrrolidone and with respect to the heating of the mixture to 82 °C. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the ratio of hexanitrostilbene to n-methylpyrrolidone and the temperature to achieve the desired end result.

Merely modifying the process conditions such as temperature and concentration is not a patentable modification absent a showing of criticality. In re Aller, 220 F.2nd 454, 105 U.S.Q. 233 (C.C.P.A. 1955).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jafar Parsa whose telephone number is (571)272-0643. The examiner can normally be reached on 8 a.m.-4:30 p.m. (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571)272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. PARSA
PRIMARY EXAMINER



Jafar Parsa
Primary Examiner
Art Unit 1621

8/5-104

JP